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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed August 25, 1981

JANET A. DUGGAN,

Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF JOB SERVICE and A. Y. McDONALD MANUFACTURING COMPANY,

Defendant-Appellee.

1-88
2-65580

Appeal from Polk District Court. Robert O. Frederick, Judge.

Appellant-claimant appeals from district court's judgment on judicial review affirming defendant-agency's denial of unemployment benefits asserting 1) that the agency's decision conflicts with the applicable statutes and agency rules, and 2) that the evidence was insufficient to support a finding that she voluntarily quit without good cause attributable to her employer. AFFIRMED.

John Lansing Brown of Legal Service Corporation of Iowa, Dubuque, Ia., for plaintiff-appellant.

Walter F. Maley, of Iowa Department of Job Service, for defendant-appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Appellant-claimant, Janet A. Duggan, appeals from the district court's judgment on judicial review affirming defendant-agency's denial of unemployment benefits. She asserts 1) that the agency's decision conflicts with the applicable statutes and agency rules and 2) that the evidence was insufficient to support a finding that she voluntarily quit without good cause attributable to her employer. We affirm.

Claimant was employed by A. Y. McDonald Manufacturing from August of 1973 until October of 1979. She worked as a shipping clerk during the last two years of her employment. On October 28, 1979 claimant submitted to her employer a statement from her doctor indicating that she was an obstetric patient and should only do "light duty" work. The employer decided it could not offer her only light duty work, so she was laid off that day. She filed a claim for unemployment insurance benefits on October 30th. On November 14th, an agency claims deputy made a decision denying benefits because claimant left work "voluntarily due to pregnancy without the advice of a licensed and practicing physician." Claimant appealed and hearing was held at which only the claimant appeared. The hearing officer's decision, filed December 11th, affirmed the deputy's decision disqualifying claimant for unemployment insurance benefits. Claimant then appealed to the agency Appeal Board, which affirmed the hearing officer's decision without oral hearing. Claimant filed her petition for rehearing on February 21, 1980.[1] Claimant filed a petition for judicial review on March 26, and the district court affirmed the agency decision in its ruling filed July 22nd. This appeal followed.

I. Scope **of Review.** Pursuant to Iowa Code § 17A.20 (1981), our review in this case is limited to a determination of whether the district court made errors of law when it exercised its powers of review of the agency action under section 17A.19. Brumley v. Iowa Dept. of Job Service, 292 N.W.2d 126, 128 (Iowa 1980); Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979); City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978). Iowa Code § 17A.19 (1980), limits the district court's review

[1] Although the Board granted her application for rehearing on March 4th, the Board did not issue its decision until March 25th. Therefore, under Iowa Code § 17A.16(2) (1981), Ms. Duggan had the right to assume that her application had been deemed denied, since it did not appear to have been granted within the statutory 20 day period.

to a determination of whether the agency committed any errors of law specified in section 17A.19(8). To determine whether the district court properly exercised its power of judicial review, "this court applies the standards of section 17.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. If the conclusions are the same, affirmance is in order. If they are not, reversal may be required." Jackson County, 280 N.W.2d at 429-30. Section 17A.19(8) provides that the district court shall reverse or modify the agency action if substantial rights of the claimant have been prejudiced because such action is affected by error in the application of law or administrative rule (Iowa Code § 17A.19(8)(f) (1980)).

II. Agency's Findings and Conclusions. Claimant asserts that the agency and district court erred in concluding that she left work voluntarily without good cause attributable to her employer. We disagree.

The agency, in its findings of fact, determined that claimant had been laid off. We believe this finding was clearly supported by substantial evidence. Evidence is substantial if a reasonable person would find it adequate to reach a decision. City of Davenport, 264 N.W.2d at 311. In making this determination, we are limited to the record made before the agency. § 17A.19(7).

The claimant's uncontroverted testimony was that she presented her employer with a note from her physician indicating that she was to do only light duty work. The employer responded by telling claimant it could not offer her only light duty work and that in order for her to work at all, she would have to have a statement from her doctor saying she could do any type of work. Claimant was unable to obtain such a statement. The employer then laid off Ms. Duggan.

Iowa Code § 96.5 (1981), disqualifies an individual for benefits who leaves work voluntarily without good cause attributable to the employer. Section 96.2 limits benefits to those persons unemployed through no fault of their own.

In Moulton v. Iowa Employment Sec. Comm'n., 239 Iowa 1161, 1171, 34 N.W.2d 211 (1948), the Court quoted a Pennsylvania case:

> If it is clear that a person's unemployment is the result of his own fault, he is not eligible for compensation under the act, irrespective of his willingness to apply for, or accept suitable employment when offered to him, or that his leaving work was not wholly voluntary.

The meaning of "fault" is not limited to something that is blameworthy, culpable or wrongful. In Moulton, the court said at 1165:

> Under any accepted or reasonable definition of the words "voluntary" or "voluntarily", we think it must be said that her quitting was of her own volition or choice. No doubt she would have preferred continuing her work for defendant had her physical condition permitted. But her condition was due to her own deliberate, voluntary act and choice. The fact that she could not work because of her physical disability did not make her quitting involuntary, under the facts, or under a reasonable construction of said section 96.4 subsection 3, or of the legislative act as a whole."

After she became pregnant, Ms. Duggan could perform only "light duty work." She could not perform the duties her job required. Therefore, the agency was correct in holding that Ms. Duggan had voluntarily quit.

The claimant contends that the 66 G.A. 1975 session changed the Moulton holding by the enactment of section 96.5(1)(d), The Code 1981. She urges that even though she may have voluntarily quit, she has qualified for benefits by offering her services to her employer for suitable comparable work.

In Shantz v. Iowa Employment Sec. Comm'n., 248 N.W.2d 88, 90 (Iowa 1976), the court said: "Although a claimant cannot qualify for benefits unless he is able to work and available for work, he may be disqualified for benefits under § 96.5(1) even when he meets that condition."

Section 96.5(1)(d) is limited by its terms to the time period after pregnancy. It states "he or she left his or her employment..because of pregnancy...and after recovering from such...pregnancy when recovery is certified by a licensed and practicing physician...." In this case, claimant does not seek benefits after recovery from her pregnancy. She seeks them during pregnancy. There may be good reasons to provide benefits to a worker who is able to perform certain work activities during pregnancy, but is unable to perform her regular job, but that is an issue that must be addressed to the legislature.

Section 96.5(1)(d) is limited by its terms to provide unemployment benefits post-pregnancy and does not provide benefits during the pregnancy term. Therefore, the fact that Ms. Duggan offered to perform "light duty" work for her employer does not remove her disqualification for employment benefits, since she voluntarily quit within the meaning of section 96.5, The Code.

Since there was substantial evidence to support the finding of the agency, we affirm.

AFFIRMED.